

I. COMMITTEE HEARING AND REVIEW; DISMISSAL AND WITHDRAWAL

§ 32. Generally; Preparation of Briefs

The controlling statute provides that contested election cases are to be heard by the Committee on House Administration on the record of the case. This record consists of the papers, depositions, and exhibits filed with the Clerk.⁽¹⁹⁾

The contestant prepares a brief with an appendix disclosing those portions of the record sought to be considered. A similar brief is prepared by contestee.⁽²⁰⁾

Withdrawal of Evidence

§ 32.1 A contestant may be permitted to withdraw (without prejudice) unprinted evidence which he has submitted while testifying before a committee.

In the 1934 Pennsylvania election contest of *Shanahan v Beck* (§47.15, *infra*), the contestant presented no documentary evidence to the election committee of the matters charged in his notice of contest and filed no brief in the matter. While the committee

found that this constituted “laches” and was inexcusable under the circumstances, the contestant was nevertheless permitted to withdraw unprinted evidence which he had submitted while testifying before the committee, without prejudice.

§ 33. Dismissal and Withdrawal of Contest

Cause for Dismissal

§ 33.1 An elections committee may dismiss a contest for failure of a party to present evidence of matters charged in a notice of contest, or failure to file briefs as provided by law, or failure of a contestant to appear and show cause why his contest should not be dismissed.⁽²¹⁾

Order to Appear

§ 33.2 A contestant may be ordered to appear before a committee and show cause why his contest should not be dismissed for failure to submit evidence.

19. 2 USC §392(a).

20. 2 USC §392.

21. See *Casey v Turpin* (§47.3, *infra*), a 1934 Pennsylvania contest.

In the 1934 Pennsylvania election contest of *Casey v Turpin* (§47.3, *infra*), the elections committee dismissed the case, stating in its report that the contestant had failed to present evidence to the committee of the matters charged in his notice of contest, or to file briefs, or to appear in person to show cause why his contest should not be dismissed.⁽¹⁾

Withdrawal of Contest

§ 33.3 Where a recount failed to disclose evidence of an alleged discrepancy, a contestant withdrew his contest.

In the 1951 Missouri contested election of *Karst v Curtis* (§56.2, *infra*), the contestant requested withdrawal of his contest after a recount failed to disclose the irregularities suggested by his party's county committee, based on charges of improper tallying of ballots in a local election. The con-

1. In an earlier communication with the Clerk, the contestant had alleged that the commissioner before whom testimony had been taken in his behalf had failed to forward this testimony. The contestant had accordingly requested the House to require production of such testimony. Although the request was referred to the Committee on Elections and ordered printed as a House document, it is unclear whether action was ever taken on the request.

testant's communication was referred by the Speaker to the Committee on House Administration and printed as a House document. The contest was then dismissed by House resolution.

Manner of Withdrawal

§ 33.4 Where a defeated candidate wishes to withdraw from a contest he has initiated, he does so by way of a written request for dismissal, which he should file with the Clerk of the House. Such dismissal is then brought to the attention of the House by a letter from the Clerk to the Speaker.

In *Williams v Mass* (§49.3, *infra*), a 1937 Minnesota contest, a defeated candidate who had initiated an election contest communicated to the Clerk his statement of withdrawal within the time permitted by law for the taking of testimony.

§ 33.5 Contestant's notice of withdrawal of contest may be submitted in the form of a letter to the Clerk at any time during the time required by law for the taking of testimony.

In the 1939 Ohio election contest of *Smith v Polk* (§50.3, *infra*), the Clerk transmitted a letter to

the Speaker informing him that the Clerk had received a letter from the contestant withdrawing the contest. The contestant's letter asked that the contest be dismissed by the House. The Speaker laid the communication before the House and then referred it to the Committee on Elections No. 3 and ordered it printed as a House document.

§ 33.6 Where, during the time required by law for the taking of testimony, the contestant notifies the Clerk of his withdrawal of the contest and of his request that it be dismissed, the Clerk communicates such request to the House for reference to an

elections committee by the Speaker.

In *Smith v Polk* (§ 50.3, *infra*), a 1939 Ohio contest, contestant notified the Clerk of the House by letter of his withdrawal of the contest which he had instituted under the Federal Contested Elections Statutes against the seated Member (James G. Polk). This letter asked that the contest be dismissed by the House. Contestant's decision to withdraw and dismiss his notice of contest was based on his belief as to the expense of obtaining evidence and what he perceived as a difficulty in obtaining a favorable determination from an elections committee, the majority of which represented members from another political party.⁽²⁾

J. EVIDENCE

§ 34. Generally

The ordinary rules of evidence govern in election contests as in other cases; thus, the evidence

must be relevant and confined to the point in issue.⁽³⁾

Evidence taken *ex parte* and not in conformity with the election contests statutes will not be considered.⁽⁴⁾ Evidence gathered by a

2. In debate on a resolution dismissing the 1965 Iowa election contest of Peterson v Gross (§ 61.3, *infra*), Neal E. Smith (Iowa), stated that election contest procedures cost from \$10,000 to \$30,000 at a time when "few, if any, Democratic candidates for Con-

gress in Iowa ever had \$10,000 available to spend in a general election campaign, let alone a contest. . . ." 111 CONG. REC. 26502, 89th Cong. 1st Sess., Oct. 11, 1965.

3. Cannon's Precedents § 77.

4. § 34.3, *infra*.